



POLICE DEPARTMENT CITY OF NEW YORK

June 14, 2017

MEMORANDUM FOR: Police Commissioner

Re: Police Officer Daniel Neira
Tax Registry No. 937172
Facilities Management Division
Disciplinary Case No. 2015-13682 & 2016-15765

Charges and Specifications:

Disciplinary Case No. 2015-13682

1. Said Police Officer Daniel Neira, assigned to Police Service Area #5, while off-duty, on or about and between February 26, 2015 and May 28, 2015, engaged in conduct prejudicial to the good order, efficiency or discipline of the Department to wit: said Police Officer violated a valid [REDACTED] District Court Order prohibiting the possession of any animals for a period of five (5) years.

P.G. 203-10 Page 1, Paragraph 5 – PUBLIC CONTACT –PROHIBITED
CONDUCT

Disciplinary Case No. 2016-15765

1. Said Police Officer Daniel Neira, assigned to Facilities Management Division, on or about December 20, 2015, in [REDACTED], was wrongfully and without just cause absent from said residence without permission of said officer's District Surgeon and/or the Medical Division Sick Desk Supervisor.

P.G. 205-01 Page 2, Paragraph - REPORTING SICK
Operations Order #22 of 2011 - PILOT PROGRAM-HOME
CONFINEMENT WHILE ON SICK REPORT

Appearances:

For the Department: Beth Douglas, Esq.
Department Advocate's Office
One Police Plaza
New York, NY 10038

For the Respondent: David Roche, Esq.
160 Broadway, Suite 708
New York, NY 10038

Hearing Date:
May 3, 2017

Decision:
Guilty

Trial Commissioner:
ADCT Nancy R. Ryan

REPORT AND RECOMMENDATION

The above-named member of the Department appeared before me on May 3, 2017. Respondent, through his counsel, entered a plea of Guilty to the subject charges and testified in mitigation of the penalty. Respondent called Rose Neira as a witness. A stenographic transcript of the mitigation record has been prepared and is available for the Police Commissioner's review.

DECISION

After reviewing the evidence presented at the hearing, and assessing the credibility of the witnesses, I find Respondent, having pleaded Guilty, is found Guilty as charged.

SUMMARY OF EVIDENCE IN MITIGATION

Disciplinary Case No. 2015-13682

It is undisputed that on February 26, 2015, Respondent and his wife, Rose Neira, in being resented on a prior conviction under New York Consolidated Laws, Agriculture and Markets Law § 353 (Overdriving, torturing and injuring animals; failure to provide proper sustenance), were individually given a separate written order issued by Judge Ferrell of the District Court-██████████. Both orders stated, "It is hereby ordered that the above named defendant shall not own, harbor, or have custody of control

of any animals.” The order was to remain in effect until February 26, 2020. The order contained language in all bold face capital letters, and outlined by a box, that failure to obey the order may result in mandatory arrest and criminal prosecution and incarceration for up to one year. (Resp. Ex. B)

On May 28, 2015, a search warrant was executed at the Neira home and a dog, a cockatoo, and a tarantula were found and removed by the authorities. [REDACTED]

[REDACTED]

While Respondent has admitted that he violated the February 26, 2015, court order, the defense has asked that mitigating factors be considered in determining any penalty. These factors include 1) the animals belonged to his wife; 2) there was some confusion in the court processes because an appeal had been in place on the original conviction; 3) a previous court order issued in the case gave Respondent 30 days to remove any animals; 4) his wife’s probation officer knew she had the animals after February 26, 2015; and 5) Respondent temporarily moved into his mother’s residence on May 19, 2015, since his wife was not expediting the relocation of the animals.

Both Respondent and his wife testified. Rose Neira testified that she has been married to Respondent for ten years and in 2010, they were living with their children and several animals, including birds and dogs, in [REDACTED] Ms. Neira further testified that she owned the animals and Respondent had not brought any of those animals into their home. (Tr. 21-22) One dog she adopted got sick and she couldn’t afford to take it to the vet. (Tr. 22-26) Rose Neira and Respondent were charged in [REDACTED] Criminal Court with malnourishment of this dog. In 2012, they were both

convicted, after a trial, and as part of the sentence they were prohibited by court order from possessing any animals and Rose Neira was placed on probation. (Tr. 27) This court order gave the Neiras 30 days to remove the animals. Their attorney appealed and that sentence was stayed. The appeal was rejected in 2015, and both Rose Neira and Respondent had to return to court on February 26, 2015, for reinstatement of the sentence. At that time, Rose Neira was placed on probation and the court issued orders to both Rose Neira and Respondent to remove any animals from their home. This order did not contain any language concerning a grace period to remove the animals. (Tr. 28-29, 43-44, Resp. Ex. B) The animals in the home at that time were a dog, a cockatoo and a tarantula. (Tr. 41)

Rose Neira testified that she began to report to probation once a month after February 26, 2015, and her probation officer told her to get rid of the animals as soon as possible. Ms. Neira began to make efforts to find new homes for the animals and she kept her probation officer informed of her attempts. According to Ms. Neira, the probation officer never told her she was in violation of the court order. (Tr. 29-30, 32) Ms. Neira testified that during this time period she also had conversations with Respondent about the animals. He wanted her to get the animals out of the house as soon as possible and suggested bringing them to a shelter. Ms. Neira was not comfortable with this suggestion and continued to look for homes for the animals. (Tr. 31) Ms. Neira further testified that Respondent wanted to remove the animals, but she refused to allow him to do so. (Tr. 31-32)

In April, 2015, the application for the appeal of the original conviction was reinstated, but the sentence was not stayed. Ms. Neira acknowledged that at that point it

became even clearer that the animals had to be removed from the home. (Tr. 33) Ms. Neira testified that in mid-May she found someone to take her dog and bird and she made arrangements for that to happen at the end of May. (Tr. 33) On May 27, 2015, Ms. Neira saw her probation officer and told her the animals were to be removed that weekend, but the next day [REDACTED] officials came to her house and arrested her. (Tr. 34) Ms. Neira testified that Respondent was not living in the home at that time as he had left in the middle of May until early June to stay with his mother. (Tr. 35, 46-47) She further testified that she exchanged text messages with Respondent where he told her he couldn't stay in the house with the animals still there as he was risking his career over it. (Tr. 35-36, Resp. Ex. A) Ms. Neira agreed with Respondent's counsel that it was fair to say that any decisions regarding removal of the animals and how they were going to be removed were made by her. (Tr. 40)

On cross-examination, Ms. Neira admitted that after February 26, 2015, she never reached out to the [REDACTED] Animal Cruelty Squad, or the Humane Society, or the ASPCA. (Tr. 43)

Respondent testified that upon his conviction in 2012, he had been sentenced to a fine and was ordered to have no animals for five years and to remove any existing animals from the home in 30 days. His attorney, however, obtained a stay of that sentence within the 30 days, so no animals were removed from his home at the time. (Tr. 51) Respondent admits that on February 26, 2015, after the appeal was originally rejected, he was resentenced to the fine and the order regarding animals was again given to him, except this order did not provide a time frame to remove existing animals. Their attorney told him he was going to resubmit the appeal and assured him the stay of

sentence would be issued again. (Tr. 53) Respondent testified that he told his wife that if the stay did not go through, she should start making preparations now to get rid of the animals. (Tr. 53-54) Respondent further testified that his wife informed him that her probation officer looked at the order and told her that there was no timeframe given for removing the animals, but she needed to get it done as soon as possible. (Tr. 55) Then on April 16, 2015, Respondent learned that there would be no stay of the sentence in the case, and he informed his wife that she had to get rid of the animals immediately. (Tr. 56) Respondent testified that he was constantly arguing with his wife over the issue. He would have just dropped the animals off at a shelter, but she was adamant he was not to go near the animals. (Tr. 56)

Respondent, who was assigned to PSA 5 at the time, met with his captain and informed the Integrity Control Officer and his immediate supervisor of the status of the case, the appeal and the sentence. (Tr. 57) The Assistant Integrity Control Officer documented conversations with Respondent on these issues on February 27, 2015, and May 20, 2015. (Resp. Ex. C and D) Respondent testified that, as is documented in the May 20, 2015, report (Resp. Ex. D), he removed himself from his house because the animals had not been removed. The document indicates that Respondent advised his command on the morning of May 20, 2015, that he decided on May 19, 2015, to temporarily reside with his mother. (Resp. Ex. D) [REDACTED]

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Respondent testified, by way of mitigation, that on December 20, 2015, he was on modified assignment. His RDOs were Saturday and Sunday. Well in advance of this

date, he had purchased tickets to take his son to a new Star Wars movie. At the time he purchased the tickets he was not aware that he would need surgery a week or two prior to December 20th. Respondent testified that the previous month he had been out sick for a week. When the sergeant conducted home visits during that November, 2015, period, she advised him what since he was returning to work on a Monday, he was free to spend the weekend, which were his RDOs, as he wished. Respondent further testified that based on this experience he assumed that he only needed to be in his residence during his hours of employment. Since then he has learned that if an officer is on modified assignment, he or she must remain at the residence at all times except as permitted by the district surgeon. He admitted that he violated this rule by taking his son to the movie on December 20, 2015.

PENALTY RECOMMENDATIONS

In order to determine an appropriate penalty, Respondent's service record was examined. See *Matter of Pell v. Board of Education*, 34 NY 2d 222 (1974). Respondent was appointed to the Department on January 10, 2005. Information from his personnel record that was considered in making this penalty recommendation is contained in an attached confidential memorandum.

In this case, the Department Advocate has asked that a penalty be imposed of 32 days already served on suspension as well as an additional penalty of the forfeiture of eight vacation days and the imposition of one year of dismissal probation. Respondent's counsel indicated that Respondent's main concern was not the number of days he loses but that he not be placed on dismissal probation so that he could get his career back on track.

With regards to Case Number 2016-15765, penalties in other sick leave abuse cases include one where an eleven-year police officer, with no formal disciplinary history, negotiated a penalty of ten (10) vacation days for leaving her residence to go to the DMV while on sick leave without permission. Respondent acknowledged her misconduct. Disciplinary Case [REDACTED] [REDACTED] In another case a nine year police officer, with one prior adjudication (Bronx wiretapping), negotiated a penalty of 10 vacation days for being absent on three occasions from his residence during the time that was his scheduled tour of duty without permission of the District Surgeon and/or the Sick Desk Supervisor while on sick leave. Disciplinary Case [REDACTED] In Respondent's case, I credit his testimony that he left his residence on only the one occasion, which distinguishes his case from the above case where three occasions were involved. I also credit his testimony that the day he left his home was on a regularly scheduled RDO and he wasn't aware that his change in status changed his confinement requirements from those he had just previously experienced the prior month. While his ignorance of the requirements does not excuse the violation, his reliance on his most recent experience for guidelines does provide mitigation in that it lessens the probability that the violation was a willful disregard of the confinement requirement. Therefore, for this case, I recommend that the penalty imposed be a loss of two vacation days.

Case No. 2015-13682 presents a much more serious situation. In this case Respondent has admitted that he violated a valid court order. The job of a police officer is to enforce the law. An officer may be called on to arrest people who violate court

orders. An officer's ability to be tasked with this responsibility is called into question when they have chosen to disobey a court order themselves.

I do not find that Respondent's attempts to mitigate the severity of his actions hold much weight. There was a specific order directed to him stating he shall not own, harbor, or have custody or control of any animal. It does not matter if the animals technically belonged to his wife, in that he had allowed them in the shared residence, and therefore was harboring animals. The fact that Respondent temporarily stayed at his mother's residence, for a short period of time almost three months after the order was issued, also does not remove the fact that he was aware that animals were still being harbored in his home in violation of the court order.

With regard to any confusion over a grace period to remove the animals, I find that the February 26, 2015, court order was very clear on its face that it was effective from February 26, 2015. If Respondent did indeed question whether there was a grace period for removal, he provided no testimony that he consulted with the court to clarify the matter. In addition, even if Respondent thought he had a 30 day grace period based on the first order, the animals were not removed even within 30 days from February 26, 2015. Respondent was in continual violation of the court order for approximately three months, [REDACTED]

While there is no precedent offered for a penalty imposed for a violation of a court order similar to the one in this case, there are cases where discipline was imposed for violation of orders of protection. In one case, a twenty-year police officer with no prior disciplinary history negotiated a penalty of 30 suspension days already served and counseling for violating a Family Court Order of Protection and failing to notify the

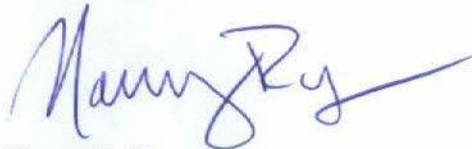
Operations Unit on two separate occasions after being involved in domestic incidents with his estranged wife. Disciplinary Case No. [REDACTED] In another case, a nine-and-a-half-year police officer with no prior disciplinary record negotiated a penalty of 15 vacation days for wrongfully violating a valid Family Court Order of Protection by sending numerous text messages to her ex-husband causing him to feel annoyance and alarm. Disciplinary Case No. [REDACTED]

In the case cited by The Department Advocate as precedent, a four-year police officer with no prior disciplinary history negotiated a penalty of sixty (60) pretrial suspension days, one-year dismissal probation and agreed to cooperate with counseling for misconduct in two disciplinary matters both involving domestic incidents with his wife. In the first case, Respondent pled guilty to (i) engaging in a physical altercation with his wife and obstructing her breathing and (ii) engaging in said encounter while his two-year old daughter was present. In the second case, five months after the initial incident, Respondent went to his wife's home despite a full stay away order of Protection. He pled guilty to (i) violating a valid criminal court Order of Protection; (ii) engaging in a physical altercation with a male and (iii) entering the premises of his wife's residence without permission to do so. Disciplinary Case No. [REDACTED]

[REDACTED] This court acknowledges that this case, in which the penalty included the loss of 60 pretrial suspension days, is distinguishable from Respondent's in that Respondent has plead guilty to a violation of a court order and the charge does not involve any other violent conduct. However, while I do not recommend the imposition of the loss of 60 days in this case, I do recommend a significant penalty based on the fact that Respondent violated a court order and on the fact that Respondent's prior

disciplinary history includes the loss of 35 days for a case involving failure to provide sustenance to animals. I recommend a penalty be imposed of 32 days previously served on suspension as well as an additional penalty of the forfeiture of six vacation days for the violation of the court order and the loss of two vacation days for Respondent's failure to comply with sick leave policy. Furthermore, I recommend that based on the aforementioned facts of this case and Respondent's prior disciplinary matter, that Respondent be **DISMISSED** from the New York City Police Department, but that his dismissal be held in abeyance for a period of one year, pursuant to Administrative Code Section 14-115 (d), during which time he is to remain on the force at the Police Commissioner's discretion and may be terminated at any time without further proceedings.

Respectfully submitted,



Nancy R. Ryan
Assistant Deputy Commissioner Trials

APPROVED

OCT 25 2017

JAMES P. O'NEILL
POLICE COMMISSIONER



POLICE DEPARTMENT CITY OF NEW YORK

From: Assistant Deputy Commissioner Trials

To: Police Commissioner

Subject: CONFIDENTIAL MEMORANDUM
POLICE OFFICER DANIEL NEIRA
TAX REGISTRY NO. 937172
DISCIPLINARY CASE NO. 2015-13682 & 2016-15765

Respondent was appointed to the Department on January 10, 2005. On his last three annual performance evaluations, beginning with the most recent, he received an overall rating of 4.5 "Extremely/Highly Competent," 3.5 "Highly Competent/Competent," and a 3.0 "Competent." [REDACTED]

In 2013, Respondent forfeited 31 days previously served on suspension and four vacation days for failing to provide proper sustenance to his two-year old pet dog, endangering the welfare of his children by keeping venomous reptile as a pet, and for failing to notify IAB that he was under investigation by [REDACTED] regarding the aforementioned events.

Between December 7, 2010 and January 6, 2011, Respondent was suspended from duty. He was placed on Level II Disciplinary monitoring from March 2, 2011 to January 15, 2014 for Serious Misconduct. On September 9, 2015, he was again placed on Level II Disciplinary monitoring for Serious Misconduct. This monitoring remains ongoing.

For your consideration.

Nancy R. Ryan
Assistant Deputy Commissioner Trials